

**MINUTES FOR THE
MEETING OF THE
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, SEPTEMBER 22, 2006
TIME: 9:00 A.M.
PLACE: KALANIMOKU BUILDING
LAND BOARD CONFERENCE ROOM 132
1151 PUNCHBOWL STREET
HONOLULU, HI 96813

Chairperson Peter Young called the meeting of the Board of Land and Natural Resources to order at 9:05 a.m. The following were in attendance:

MEMBERS

Mr. Peter Young
Mr. Jerry Edlao
Mr. Timothy Johns

Mr. Ron Agor
Ms. Taryn Schuman
Mr. Rob Pacheco

STAFF

Mr. Dan Polhemus, DAR
Mr. Dan Quinn, SP

Mr. Russel Tsuji, Land
Mr. Sam Lemmo, OCCL

OTHERS

Mr. Keola Nakanish, E-1
Mr. Gregory Dunn, E-1
Mr. Uluwehi Keaunui, E-1
Mr. Rusty Brainard, F-1
Mr. John Lamer, D-8
Ms. Kapeka Moses, D-8
Mr. Richard Takase, K-1
Mr. David Tongg, K-1
Ms. Sandy Gillis, M-1, M-3
Ms. Joanne Leong, F-2
Mr. Dave Gulko, F-2
Mr. Steve Stanley, F-2
Ms. Lina Paul, F-2
Mr. Don Pollaki

Ms. Micky Huihui, E-1
Mr. Pono Batalona, E-1
Ms. Noe Kalipi, D-5
Mr. Scott Godwin, F-2
Mr. Ron Matheiu, K-1
Mr. Glenn Soma, D-7
Mr. Henry Curtis, D-5
Mr. Jesse Sehid, K-1
Mr. Peter Stern, K-1
Dr. Charles Lipman, F-2
Mr. Dave Rainey, F-2
Ms. Kat Brady, F-2
Mr. Randy Kosaki, F-2

{Note: language for deletion is [bracketed], new/added is underlined}

Item A-1: Minutes of September 8, 2006

Member Johns recused himself

Unanimously approved as submitted (Edlao, Schuman)

Item M-1: Amendment No. 5 to Lease No. DOT_A_92-0018 Restaurant and Lounge Concession Lease Host International Inc., Honolulu International Airport.

Item M-2: Issuance of Mater Lease FAA Agreement No. DTFAWP-06-L-00089 United States of America (USA) Federal Aviation Administration (FAA) Waimea-Kohala Airport.

Item M-3: Consent to Sublease Retail Concession DFS Group L.P. to Shakanet, Inc. Kahului Airport.

Item M-4: Issuance of Revocable Permit to Jas. W. Glover, Ltd, Keehi Industrial Lots Kalihi-Kai, Honolulu, Oahu.

Unanimously approved as submitted (Schuman, Agor)

Item E-1: Request for Approval for Issuance of a Revocable Permit and Non-Exclusive Lease of State Park Lands at Makiki Valley State Recreation Area, Makiki, Oahu to Halau Ku Mana Public Charter School for educational uses.

Member Johns recused himself

Mr. Dan Quinn, Administrator for State Parks, gave some background information in which he stated part of Makiki Valley is already being leased to the Hawaii Nature Center and this lease to Halau Ku Mana would actually be for use of the lower portion of the valley. This Hawaiian immersion, charter school was recently displaced from Manoa Valley. The school focuses on cultural education and since the Hawaii Nature Center focuses on natural resource based education for the public schools, the Nature Center believes that this would be a good partnership. They have already worked with this school before and the curators for the valley have sent in letters of support. Staff feels that this is consistent with the master plan for the Makiki/Tantalus area and public use and access shall be maintained. Staff is recommending the Board to issue an immediate, revocable permit during the interim while the lease conditions are being worked out.

Keola Nakanishi, principal of Halau Ku Mana, stated that they are excited at the prospect of “returning home” because their host communities are Papa Koea and Maunalaha Valley. Residents of these communities were their founding and visionary members as well as make up their current board members, council members, volunteer teachers, and staff, students, and parents. They have been around for only 6 years and he believes that

having the school in this particular area will strengthen their partnerships with the Hawaii Nature Center and the Ka'awa Ohana Curatorship. They will also be able to continue work that they had already started in this area (in 2001 Halau Ku Mana did a forest restoration project in this area). Mr. Nakanishi also stated that programmatic and funding collaborations from this 3 way partnership (themselves, the Hawaii Nature Center, and the Community) brings about endless possibilities. The increase in funding could allow a duplicate a water quality study that they had done for Manoa Stream, but can now be applied to Makiki Stream. The school could also help further efforts to educate locals and visitors who frequent the area, both in environmental and cultural aspects. Halau Ku Mana would like a long term place to settle due to the investment of time, money, and energy that goes into establishing a school.

Ms. Mikey Huihui, the Ohana and Community Development Director, has been with the school for 3 years. She puts on a quarterly community and family day to showcase what the students have been doing and feels that it will bring about a sense of sharing and connecting with the host communities. Other foreseen possibilities are a curriculum based around the dissemination of Hawaii and the preservation of natural resources.

Mr. Nakanishi stated that a 30 year lease would be good start so that they can establish the long term planning and partnerships.

Two of Halau Ku Mana's students who have been a part of the school since its beginning, expressed their feelings about the school and how it has changed them and their fellow classmates as people and how much they enjoy their school. The stated that they have learned a lot about the culture through hands on learning and also expressed how grateful they would be if the school was granted a permanent home.

Gregory Dunn, the executive director of the Hawaii Nature Center, stated that he was in support of a 30 year lease to Halau Ku Mana. He states that this project is in compliance with the 1996 master plan and EIS which shows that the lower park area was to be leased to the Nature Center. Instead, the Hawaii Nature Center is asking for that portion to be leased to Halau Ku Mana as a part of a collaborative community effort. For the last 5 years, the Hawaii Nature center has been reaching out to the community and sees a great benefit as having Halau Ku Mana being the leading charter school. He feels that the school will bring a culture aspect to their programs and can only be enhanced by this relationship.

Mr. Quinn stated that the applicants are now asking for a 30 year lease; however the staff recommendation is for a concurrent lease term with the Hawaii Nature Center, but that will be up in 2022. Amendments will eventually need to be made to the Hawaii Nature Center's lease.

The Board:

Amend Condition 2 & 3 to read:

“2) That the Board approve, with the consent of the Hawaii Nature Center, [~~Hale~~ Halau Ku Mana’s use of land currently under Hawaii Nature Center’s lease with the State.

3) That the Board approve immediate issuance so a revocable permit to [~~Hale~~ Halau Ku Mana for portions of Makiki Valley State recreation Area for the interim period while the lease is being processed.

Unanimously approved as amended (Schuman, Agor)”

Add to Recommendations:

“7) That the lease issued to Halau Ku Mana will be for 30 years.”

Item E-2: Request for Permission to Construct a Welcome Gateway Sign, at Ka Iwi Scenic Shoreline, Oahu

Mr. Quinn stated that the Waimanalo Community is asking for permission to install a sign to let people know that they are entering Waimanalo. It will be similar to the one on the other side of Waimanalo, across from the golf course. They are looking to place it on the Ka Iwi scenic shoreline, in the planting area of the lookout where it will be a few feet away from the start Waimanalo. The sign will not block the view of the panorama and will be slightly smaller than the Kailua side sign. It is out of the DOTs right of way and the site picked does not interfere with people’s sight distance.

Unanimously approved as amended (Schuman, Johns)

Item K-1: Enforcement Action and Request to Modify Conditions of Conservation District Use Permit OA-1947 Regarding the Koolau Golf Course (formally Minami Golf Course) Located at Kaneohe, Island of Oahu, TMK: (1) 4-5-042:001 & 006.

Mr. Sam Lemmo, Administrator for the Office of Conservation and Coastal Lands, stated this is a combination of an enforcement action and a request to modify conditions to a CDUA permit. Current owner and permittee is the First Presbyterian Church of Honolulu. Koolau Golf Partners (KGP) acquired the gold course in 1998 through a foreclosure deal which required them to comply with the conditions of previous permit. These conditions included:

1. Financial obligations to the Minami Foundation, a community group that was set up under the original permittee. Staff learned that KGP hadn’t met all of the financial obligations to the group.

2. Water quality monitoring to ensure management practices weren't impacting the streams that eventually empty into Kaneohe Bay. Staff found no evidence that it was done.

3. Well tests since they perform well pumping. Again Staff found no evidence that it was done.

Staff discovered these breeches when First Presbyterian Church became interested in the property, but did not want to acquire all the lands. Therefore, they had to consolidate and resubdivide the land to partition the club house and the golf course from the rest of the land, which would still belong to KGP. Since the discovery of the breeches, KGP has met the financial obligations to the Minami Foundation and Staff has followed up with the Foundation who said everything was currently paid in full. In regards to the water quality monitoring of the streams, it was concluded there were no impacts from golf practices. Staff found this satisfactory but would like to issue a \$2000 fine due to the fact the monitoring should have been done earlier and they are unsure if there were any previous impacts. Staff would also so like to issue a \$2000 fine for the breach of financial obligations. The well pumping was a difficult situation because Staff couldn't find the genesis of the condition. Staff went to the Water Commission who indicated the pump levels in the area are so low, you couldn't attribute an impact on stream flows from the pumping of those wells. Staff had found a pump test done a long time ago which indicated there shouldn't be a problem. Therefore, Staff is recommending \$6000 in fines for the breach of conditions in 3 instances, an administration fine of \$1000, and potential modifications to the permit conditions. These modifications would include deleting condition 8 of the permit, record this action as part of the deed instrument, and to implement the environmental compliance protocol recommended by BA Environmental. Staff is also recommending the removal of the condition about an impact study of well pumping, due to the Water Commission's comments.

Member Johns suggested in deleting the condition in the permit stating that the permittee has to do the well pumping study. Peter Stern, First Presbyterian's attorney, responded that in Staff's recommendation, item 3, it states that compliance with the BA environmental proposed protocol will constitute full compliance by the permittee of all prospective environmental testing, sampling, and studies. He feels that this is sufficient language to override the condition.

Chairman Young questioned the fine due to the Minami Foundation and Mr. Lemmo stated that it is due KGP never paying Minami the full sum. Chairman Young and Board Member Johns noted that it was unusual for a condition in a CDUP to have payment due to a foundation. Mr. Stern believes that the genesis of the condition was that the Minami Foundation got the original permit and at the time there was community opposition, therefore a number of conditions were added to alleviate some of the community concerns. One of those conditions was the creation of the Minami Foundation for the benefit of the Kailua-Kaneohe community and agreeing to contribute funds to it. Mr. Stern believes the condition is stated in the first amendment of the permit and was done so back in 1991.

Mr. Stern stated the Church would like to assure the Board that as the new owner they have every intention of complying with the CDUP. The Church has entered into 10 year agreement with the American Golf Corporation to continue with the operation of the golf course. They are the ones who ran the facility prior to the purchase and this means that everything will continue to operate seamlessly. Catering and community events in the clubhouse will continue on as normal with no changes foreseen in near future. The Church had acquired the clubhouse and golf course because of church membership growth and it will help to alleviate the space limitations they had faced on their old property.

Unanimously approved as submitted (Johns, Edlao)

Item D-5: Approval in Principle of the Issuance of a Direct Lease to Kaheawa Wind Power II, LLC for Commercial Renewal Wind Energy Generation Facility Purposes, Olowalu-Ukumehame, Lahaina, Maui, TMK: (2) 4-8-01: Portion 1 (SUPPORT BRANCH/Gary)

Mr. Russel Tsuji, Administrator for the Land Division, stated that this is a request by Staff for the Board's approval, in principle, of a direct lease to this Maui wind farm project. They are an already existing lessee for 200 acres in Haleakala, Maui, and are requesting an additional 325 acres. This approval would allow the entity to pursue its due diligence to comply with the CDUP and Chapter 343. They would then proceed with negotiations for a direct lease and bring it back to the Board for final approval of the lease terms. They will need a right of entry because they are going to conducting studies and would like to install some test turbans. Staff is also asking for \$12,000 fee, annually, during this due diligence period. There have been no other requests for the lease of these lands and due to the substantial amount of money invested to build the road and install the electrical infrastructure when the entity did the first project, Staff felt it was fair to proceed in this manner.

Member Johns mentioned that there was a visual impact problem from the first time and was wondering if Staff received any negative comments. Mr. Tsuji replied that the Land Division had received no formal comments, but have heard complaints due to the wind turbans being white and very visible. However, it is believed that the color was negotiated with the county and white was chosen so that the planes could see the turbans due of the wind farm being close to the airport. The synchronizing of the lights was also a problem, but will be addressed in the compliance of Chapter 343.

Mr. Tsuji stated the expense the entity would incur would be great therefore this action would grant them good faith that they can negotiate a lease for the 325 acres. Chairman Young stated that the last time, after all of the EIS and environmental studies were done, a company who had invested no money came in and wanted the lease and can see how this is more of an added precaution.

Noe Kalipi, representing UPC Hawaii, one of the partners requesting this lease, stated that through the process of the CDUP and Chapter 343 compliance, they will allow for

public comment at both times and continue with their community outreach, which has been in place over the last 2 years. She was also able to answer many of the Board's questions. In regards to the turban color, white was chosen because of the safety issues dealing with aviation. People may believe that the color should be determined by where you're looking at the towers from a certain point on Maui, but for them it was more about safety. In dealing with the synchronizing of lights, the current project has red lights on 5 out of the 20 towers and they all blink at the same time. If this was not to go through then the project would be useless. Wind development is driven by the entitlement based on location. In this case the lease will only be executed when all of the requirements have met by Federal and State law. This is so they can have assurance as they go forward with this project. In dealing with construction debris, there was a condition in their permit where they had to clean it up. Initially there was a violation, they cured it, paid a fine, and are now in compliance. Currently, they do have a right of entry provided as of August 30th to begin some of the initial EIS steps and have begun the archeological research.

Henry Curtis, from Life of the Land, stated that they are strong advocates of renewable energy. They were in support of the first wind farm, but still have some serious concerns. They feel that for this area to qualify as a wind site there has to be meteorological testing and this was a problem that came up in the first project. It was done without a permit and it should actually be one of the first permits applied for. Another concern is that this area might not be the only site from the access road that can be used for a wind farm. They should look at it as one total impact instead of bringing back new projects each time before the Board in a piece meal fashion. They feel that since wind is intermittent, the EIS should explore ways to change it to base load such as pump storage hydro in which water is pushed uphill during times when there is an abundance of wind and drop the water load where there is no wind. There is also the possibility of mixing wind with hydrogen. The last concern was that there was an alien species that came about because of the earlier project. This needs to be addressed in the EIS. He also stated that if the entity is planning on putting in the test towers before any flora or fauna studies, they would be highly against it.

Member Johns had a question about the intent of the already issued right of entry. The attorney for the entity stated it is for them to conduct archeological and botanical surveys, therefore a CDUP is not needed.

The Board:

The Board approved Staff's recommendation as submitted but added the following conditions:

"C. Authorize the department to issue a Right of Entry to allow the applicant to conduct a flora and fauna study.¹"

¹ The department had already issued a Right of Entry allowing the applicant to conduct an archaeological study.

"D. The applicant shall not be granted a Right of Entry to conduct any type of wind testing until it completes to the satisfaction of the department, the flora and fauna study and the archaeological study and, to the extent applicable, obtains a Conservation District Use Permit and any required Environmental Assessment or Environmental Impact Statement for the aforesaid wind testing."

Unanimously approved as amended (Edlao, Johns)

Item D-8: Issuance of Right-of-Entry Permit to the City and County of Honolulu, Department of Design and Construction on Lands Encumbered by General Leases, Maunalaha, Honolulu, Oahu, TMK: (1) 2-5-24:14, 15, 31, 32 (ADMINISTRATION/Charlene)

Mr. Tsuji stated that this right-of-entry is for Maunalaha Valley for the City to set up barriers before they begin work on Round Top Drive. This is so that there is no further erosion and to make sure that there are no tenants in danger.

Kapeka Moses, a resident of one of the lots that the city is asking for right-of-entry to on Round Top Drive, testified on behalf of her mother. Her mother had written a letter which stated that she has seen the changes of the natural landscape. She had noticed changes in the normal pattern and flow of the water and the community had tried to warn both the City and the State but the City responded that it was a State problem and the State said it was a City problem. There was a meeting after the flood and the community tried to push for long term rather than short time planning and to include the knowledge of the Kapuna in the process. There was a flurry of activity up at Round Top Drive and when work began 300 feet above them, they were concerned for their safety and the safety of others below. They firmly feel that the work should have stabilized the hillside, base up. They were presented with no long term plans and asked to relocate for 6 months. They understand the need for the safety and access of the roads and for them to be reopened as quickly as possible, but the construction should not start before hillside is stabilized. What they would like is to understand the plans for the project and whether or not there is a security of their land and family. They would like to know exactly what the City is planning to do, what equipment will be on their property, and what parts of their property will be protected. They need to know what the City is asking of their family and it needs to be clearly given in writing otherwise they cannot allow their consent. They would like to know why their neighbors, who are also most likely to be affected, not being asked to relocate. They would like a legal document that guarantees the protection of their home and land and a guarantee that they will be able to return home after the 6 months. They understand there is a time constraint, but there needs to be understanding and communication before the right-of-entry is granted.

Mr. Tusji stated that his understanding from the County was that the County would work with the tenants directly to get their consent. This is the first objection to the right-of-entry that he has heard. He stated it was made clear to the County that they need the consent of the tenants.

Chairman Young stated that this is the second part of stage 1. The State did their part of phase 1 and now the City will finish it up. Then the State comes back in stage 2 for further slope stabilization by the Engineering division.

City and County representative and said they had initial contact with the tenant and had hired a contractor. He is agreeable in getting the written consent from the tenants.

The Board:

The Board approved Staff's recommendation as submitted but added the following condition:

"3. The Right of Entry shall not be issued until such time as the County obtains the written consent/concurrence from the affected Maunalaha tenants."

Unanimously approved as amended (Johns, Edlao)

Item D-7: Cancellation of Governor's Executive Order No. 3064 and Reset Aside to the Department of Transportation, Harbors Division for Commercial Harbor Purposes, Owa, Kahului Harbor, Kahului, Wailuku, Maui, TMK: (2) 3-7-01:21 (SUPPORT BRANCH/Gary)

The 20.9 acres of land was originally set aside for a County park. It has never been used, therefore Staff is asking that the old executive order be canceled and a new executive order be put into place which would state that 17.3 acres be issued to DOT for the expansion of the Kahului Harbor launching ramp. This would leave 3.649 acres that would go to the Division of Boating and Ocean Recreation.

The Board:

The Board approved Staff's recommendation as submitted but added the following condition:

"D. To the extent necessary, approve of and recommend to the Governor the issuance of an executive order setting aside 3.649 acres to DBOR for the expansion of the Kahului Boat Launching Ramp and/or for a haul-out facility, subject to the standard terms and conditions set by the Board for lands set aside by executive orders."

Unanimously approved as amended (Edlao, Johns)

Item D-3: Permission to Hire Consultant for Land Division to Assist DLNR in the Review of Plans and Documents Submitted from Jacoby Development, Inc. for Master-Planned Project at Kealahou, Hawaii (APPRAISER/Cyrus)

Mr. Tsuji had a change to the Staff submittal to amend the Scope of Work and Recommendation sections of the Submittal to provide staff with the permission to hire any and all consultants it deems necessary or desirable, including, but not limited to an appraisal, real estate development consultant, engineering and marina consultants, etc., in order to help staff in its review of the upcoming Core Infrastructure Plan and Master Development Plan. Rather than being limited, they now wanted to expand it..

The Board:

The Board accepted Staffs' recommendation to amend the Scope of Work and Recommendation sections of the Submittal to read:

“to provide staff with the permission to hire any and all consultants it deems necessary or desirable, including, but not limited to an appraisal, real estate development consultant, engineering and marina consultants, etc., in order to help staff in its review of the upcoming Core Infrastructure Plan and Master Development Plan.”

Unanimously approved as amended (Johns, Edlao)

- Item D-2: Issuance of Revocable Permit to Eric and Gracinda Ishida, Kapaa Homesteads 1st & 3rd Series, Kawaihau, Kauai, TMK: (4) 4-6-08:portion 30 which abuts parcel 67 (KDLO/Joanne)**
- Item D-4: Amend Prior Board Actions of February 28, 1986, Agenda Item F-13 and July 28, 2006, Agenda Item D-1, Direct Sale of Easement to Edward A.K. Lee and Lucia R. Lee for Access and Utility Purposes; Kaimu, Puna, Hawaii, TMK: (3) 1-2-08:08 (HDLO/Gordon)**
- Item D-6: Reconsideration of Rent under General Lease No. S-4544 to The Episcopal Church in Hawaii, Lessee, for Church and Allied Purposes, Waiohuli, Maui, TMK: (2) 3-9-1:12 (ADMINISTRATION/Charlene)**

Unanimously approved as submitted (Johns, Agor)

- Item F-1: Request for Authorization to Issue one Northwestern Hawaiian Islands (NWHI) State Marine Refuge Research, Monitoring and Education Permit to Mr. Donald Palawski of the U.S. Fish and Wildlife Service, for Management Activities Within Certain State Waters, Valid from September 22, 2006 to December 31, 206.**

Mr. Dan Polhemus, Administrator of the Division of Aquatic Resources (DAR), stated that this permit is a request to allow the U.S. Fish and Wildlife Service to transit State waters with the vessel M/V Kahana for the purpose of providing logistical support to U.S. Fish and Wildlife Service operations of Nihoa, French Frigate Shoals, Laysan, Lisianski

Island, and Neva Shoal. This activity has received the endorsement of the other monument trustees, NOAA and the U.S. Fish and Wildlife Service.

Mr. Don Pollaki, U.S Aquatic Service and Refuge manager for the Hawaiian Islands, National Life Refuge (Nihoa to Pearl and Hermes and the reefs between), stated that all activities will be land based which includes helping the recovery of endangered species on Nihoa Island, which will take about 12 days, and there are year round field camps monitoring sea birds and restoring native habitats. People are stationed at these camps for long periods of time and need to be supplied by ship. The activity will take place between now and December 31st and Mr. Pollaki wanted to clarify that it is only a 1 ship transit in October. Also, black water/grey water protocol is conformed to monument standards, a cultural briefing is required for everyone who goes up to the islands, and invasive species transport to or transport between islands is taken very seriously.

Unanimously approved as submitted (Johns, Edlao)

Item F-2: Request for Authorization to Issue one Northwestern Hawaiian Islands (NWHI) State Marine Refuge Research, Monitoring and Education Permit to Dr. Russell Brainard of the National Oceanic and Atmospheric Administration (NOAA), for Activities Under the Census of Coral Reef Ecosystems (CReefs) Project, Valid from Early October Through Early November in 2006.

This is a request for a permit for to conduct research in the French Frigate Shoals in support of the Census of Marine Life Program. The purpose of this trip is to sample cryptic and micro faunal elements of the reef biota at the French Frigate Shoals in order to provide a more accurate assessment of total marine biodiversity in the Northwestern Hawaiian Islands (NWHI). The majority of the marine biota consisting of small species less than one inch in length are undocumented and in some cases, not even scientifically named. It is this knowledge gap that the research crew wishes to fill. Mr. Polhemus stated that their Native Hawaiian Advisory Group has reviewed this permit as well and while they have some concerns, they have remained relatively neutral (they have not recommended that it be denied). Many of the Conservation NGOs had serious issues with this project and many of these issues still exist. They feel that collection based research should not be allowed in the NWHI because it is a no take reserve. However, DAR felt that this project had merit and because of this difference in attitudes, they went through a series of consultations to try and reach a consensus. Through these meetings it was felt that there needed to be a change in the methodology and the proposed scope of sampling. The permit was revised and a draft submittal was supposed to be sent out to the NGOs. This did not happen and Mr. Polhemus felt that the submittal turned in, which the NGOs did get to review, did not reflect the consensus met at the meetings nor did it have the minimum scientific viability needed to make this trip worthwhile, therefore he submitted amendments to the original submittal on the day of the meeting. When modified, the submittal increased the number of samples, which many of the NGOs would have been against. If the original submittal is approved then the applicant will not go through with the activity because they feel it will be not be worth it scientifically. Mr. Polhemus

believes that this research is meaningful because we can't manage what we don't know exists.

Dr. Rusty Brainard, applicant, stated that at a meeting on the Census of Marine Life Program, there was a consensus that the NWHI is a unique site to understand biodiversity. For example, there are only 900 known invertebrate species, leaving many unknown. Also the small species are the base of the food chain and these species have not really been looked at. Due to this he feels that there is a need to establish these baseline areas. He states that there are some people who believe that this research is unnecessary due to amount of protection already in place. However these coral reef ecosystems are not protected from climate and global changes; they are only protected from human influences. He believes that without knowing about this particular ecosystem, it will be hard to make good management decisions. The samples taken for this research activity are so that they can figure out the taxonomy of the species found and even to do some molecular work (to barcode/identify) so in the future they can be known and documented.

There was a comment from Board member John in regards to other scientists who value scientific research, but are saying no to this type of research. They believe that the amounts of taking and high levels of disturbance are not worth the additional research/information added to the general knowledge pool. There was a letter from Dr. William Gillmartin who believes that there should be a prioritization that is decided before anything is done. There may be some instances where taking and disturbance that are appropriate, but everything should be laid out on the table only once and decide what is going to be the most important priorities and what can be left as is.

Mr. Pollaki stated that he had attended all of the meetings as a representative of the monument for the U.S. Fish and Wildlife Service. He was pleased that they agreed to take photographs of the affected areas before and after was very reassured that all species collected will be cataloged so that it can be used for the future. As a manager he feels that this is a project that can be used for future generations. For the Fish and Wildlife view, he believes that this would be a high priority because they need understanding of the natural character of the area that they are protecting, which for them, is the key purpose.

Randy Kosaki, from NOAA, stated that NOAA shares the same feelings as those shared by Mr. Pollaki.

Henry Curtis was concerned with the amounts of collection and believes that the amount being taken isn't as small as Dr. Brainard is making it seem. He is also concerned because Dr. Brainard stated that this research is going to be partially used for climate change, but the submittal states that species will be preserved in 95% ethanol and is wondering how an organism can be studied for climate change if it's dead. Also, DNA from the species will be used in bar coding studies which sounds a lot like bioprospecting.

Kat Brady, believes in the look and no touch. She is appalled at the prospect of 15 straight days of extraction and that project is taking place in the pupping grounds of the monk seal. Therefore she is asking for the denial of this permit.

Linda Paul, from the Hawaii Audubon Society and Vice Chair of the former NWHI Coral Ecosystem Reserve Council, stated that the council is very concerned with the spreading of invasive species and the publicity that this area is getting. However, as a zoologist, she recognizes the value of a baseline study and believes that we do need this data, but agrees that there needs to be a cut off point and a long term management plan should be created and submitted to the public for comments. In this instance, she believes that this permit makes sense because it fills in a large gap of the research that is missing and will help to show how the ecosystem works as a whole. Therefore, she supports this permit.

Steve Stanley, a research professor at the University of Hawaii, stated that this area is in no way pristine. He is concerned with the use of the term “high level of disturbance.” He believes that what is being taken is trivial. No one would ever know anything was taken. He states that there would be no impact on the ecosystem. This is one of the most detailed scientific proposals that he has ever seen and believes that there is too much fuss over this. Therefore he is in support of this permit.

Dave Rainey is asking for the Board to defer this item because of the many activities occurring in this area which is home to many of the endangered and native species in the area. The cultural working group is also wishing for more time to review this permit. He believes that there needs to be more time for the Board, the cultural group, and the community to review this permit.

Stephanie, from Environmental Defense, was concerned with the significant increase in the number of samples being collected and agrees that this decision should be delayed. In regards to needing a baseline study she believes that this will open the doors to full on invasive works in the NWHI. It was also revealed that during one of the meetings it was said that this study could possibly be done outside of the NWHI. There is also a concern that all people on the cruise don't need to sign the permit and commit to the conditions. However, Dr. Brainard responded that they were planning on having everyone sign the permit. She also has concerns about the bar coding. This area is protected through the no-take action regime and therefore feels that all action should follow suite. She believes that this is a prospecting expedition and is the first of many. She is asking for the permit to be denied.

Dave Gulko, a coral reef ecologist and a state aquatic biologist for DAR (here on his own accord and has taken vacation time to speak to the Board), was the one who primarily wrote the originally submittal. He is concerned with the revisions made and has strong concerns about this permit in general. He will okay with it going forth minding there are strong limits imposed. He is most concerned with the scale of taking being preformed and not the people doing the research. To limit the take he believes that the limit should be the taking of species 2 cm or less. He also notes that the methods overlap and the target organisms overlap therefore the cumulative impact is not being addressed very well. The

impact is actually much larger than what is being presented. For organisms that are small, the number of take is not that big of deal, but for macro organisms, it is very excessive. This type of research has never been proposed any where else and yet people are proposing for it in a highly protected area. Another issue is that the a-cropper area needs to be avoided because it is the most sensitive coral system. Also the collection of coralline algae also should be removed from the permit because it a part of the live rock; it is actually what makes that structure and forms the rock. The dredging is another big concern because it is a no-take area and the activity can be conducted outside of State waters. He also believes that they should require a fresh bleach solution daily to clean off all equipment as to avoid invasive species.

Dr. Charles Lipman, a monk seal foraging ecologist from the national Marine Fisheries Service stated that there will be no affects on the monk seals because there should be no pups there by the time the cruise goes up. There will be some impact on the critical habitat, but the species and organisms being proposed for collection are not the monk seals direct prey. There may be some temporary disturbance to their prey, but it will be short term.

Joanne Leong, the director of the Hawaii Institute of Marine Biology (HIMB), testified in favor of the permit, for the students going on this cruise as well as Dr. Brainard.

The Board:

The Board accepted Staff's amendment (attached in back) with several changes to the amendment:

1. To delete the dredging condition

And to include in the recommendations:

"1. Allowed sample conditions applied to micro organisms less than 2 centimeters in length.

2. No sampling of live acropora

3. No take of any individual or colonial organism greater than 5 centimeters, which is already known for the French Frigate Shoals of the Northwest Hawaiian Islands, and can be readily identifiable in the field. For all organisms over 5 centimeters that do not conform to that condition, the maximum is 5 per habitat type.

4. Every scientist involved shall sign the permit and agree to abide by the permit conditions.

5. Before the specimens leave the State, or before they might be loaned onward from the possession of a researcher that might have them from out of State, they will basically have to talk to us."

Approved as amended by Schuman, Johns, Agor, Pacheco (Johns, Agor)

Opposed by Edlao

Item L-1: Approval for Award of Construction Contract – Job No. F00CF64A Individual Wastewater System Improvements at Mauna Kea State Recreation Area Hilo, Hawaii.

Unanimously approved as submitted (Johns, Edlao)

Item D-1: Board Briefing by the Department of the Attorney General on the pending lawsuit filed by All Trees Services, Inc. and Terrence Rodrigues.

An executive meeting may be called to discuss legal issues such as, among other things, the Board's powers, and the Board's and State's potential liability in this case. These matters are confidential as provided by Chapter 92, Hawaii Revised Statutes and Title 13, Chapter 1, Hawaii Administrative Rules, and are further protected by the Attorney-Client privilege and the work-product doctrine.

Motion made for the Board to be called into executive session to consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities.

Motion to go into executive session, unanimously approved (Johns, Edlao)

Board went into executive session at 1:20 p.m.

Meeting back in session at 1:40 p.m.

There being no further business, Chairperson Young adjourned the meeting at 1:50 p.m. Tapes of the meeting and all written testimony submitted at the meeting are filed in the Chairperson's Office and are available for review. Certain items on the agenda were taken out of sequence to accommodate applicants or interested parties present.

Respectfully submitted,

Lauren Yasaka

Approved for submittal:

PETER T. YOUNG
Chairperson
Department of Land and Natural Resources